Supreme Court, U.S.
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No. 99-428

IN THE

Supreme Court of the United States

ROBERT WILLIAMSON PERDUE, ESQUIRE,

Petitioner,

v.

ALAN A. HUNTER, JR., M.D. and
FREDERICK MEYERS, M.D.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

RESPONDENTS' BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

This petition seeks review of a settlement agreement entered into between the Petitioner and the Respondents with respect to a medical negligence action filed in the Superior Court of the District of Columbia. The Petitioner's medical malpractice action was filed on January 22, 1995 alleging that the Respondents were negligent in the medical care and treatment they rendered to the Petitioner and that such negligence proximately caused an ischemic stroke subsequently suffered by the Petitioner. The Respondents filed timely responsive pleadings denying all allegations of negligence.

Following the completion of discovery in the underlying malpractice action, all parties and counsel appeared for trial on February 3, 1997 before the Honorable Russell F. Canan. At the time the trial was to begin in this matter the settlement negotiations which had been ongoing had resulted in a resolution of the Petitioner's claims against each Respondent. The settlement was in the amount of $400,000. At the time the trial was to commence, Mr. Perdue's counsel, Keith Donahoe, Esquire, announced that a settlement had been reached. Mr. Perdue's counsel announced the amount of the settlement, the Court inquired of the settlement, the Court approved the settlement and the Petitioner's claims were dismissed. The resolution of the Petitioner's claims was agreed to by the Petitioner as evidence by his signature upon a Praecipe of settlement/dismissal. Almost two months after the February 3, 1997 settlement agreement the Petitioner, acting pro se, filed a one-page motion with the trial court to vacate the settlement and dismissal and to reinstate the case. The trial court denied the Petitioner's Motion on May 22, 1997. The Petitioner filed an appeal to the District of

Columbia Court of Appeals on June 18, 1997. The District of Columbia Court of Appeals affirmed the trial court's denial of the Petitioner's Motion to Vacate Settlement and Dismissal on January 21, 1999 in a Memorandum Opinion and Judgment. The Petitioner first filed a petition for writ of certiorari in this Court on July 7, 1999. The Clerk rejected the Petitioner's filings for non-compliance with the rules and directed the Petitioner to refile his petition on or before September 9, 1999. A refiled petition was docketed by the Court on September 15, 1999.

As detailed below, there is no cause for this Court's review of the Petitioner's contentions which have now been rejected by the District of Columbia Court of Appeals. Additionally, the Petitioner's broad sweeping and conclusory allegations of lack of judicial procedures within the District of Columbia are unsupported.

A. The Petition Misrepresents the Underlying Resolution of this Case.

In furtherance of his contention that a procedural irregularity rampant within the Courts of the District of Columbia resulted in the improper administration of justice, the Petitioner asks this Court to protect Petitioner from his own acts. Contrary to the assertions contained in the petition, the Petitioner's medical malpractice action was resolved with not only the Petitioner's express approval but the approval of the trial court. In the Petitioner's underlying malpractice action the dialog between the Court and the parties could not have been more clear in this regard. The dialog between the Court and the parties culminated in the signing of a Praecipe of Settlement and Dismissal — most notably signed by the Petitioner herein. Thus, contrary to the bald allegations

in the petition, the Petitioner was in agreement, at the time, with the resolution reach in the underlying malpractice action. Petitioner should not now be permitted to burden this Court with Petitioner's unsupported contentions which can only be characterized as an attempt to renege on his previous decision to settle his claim.

REASONS FOR DENYING THE WRIT

The Petitioner claims that the District of Columbia Courts' lack of judicial procedures has somehow harmed him does not warrant review by this Court. The decision below represented a plainly correct application of settled law involving no conflict among any Federal Circuit and no important issue of Federal law. The bald assertion that the District of Columbia Courts lack judicial procedures is wholly unsupported as demonstrated, most appropriately, by the facts of this case.

1. The writ should be denied because of three glaring procedural failures. First, the petition filed herein was due to be filed on or before the 9th day of September, 1999 as noted in the Court's record and as the Petitioner was advised by correspondence from this Court on July 9, 1999. The petition was not docketed until September 15, 1999. Second, Rule 14(4) requires the Petitioner to state with accuracy, brevity and clarity whatever is essential to ready and adequate understanding of the points requiring consideration. The Petitioner herein failed to do so, rather, Petitioner presents an overabundance of irrelevant and extraneous material and fails to support his assertion of lack of judicial procedures with any precedent describing judicial procedures over and above those practiced in the District of Columbia which the Petitioner imposes upon the District of Columbia Courts.

Finally, Sup. Ct. R. 14(l)(g)(i) imposes upon the petitioner the obligation to have made a record in the proceeding below of the specific Federal question implicated in the present petition. The Rule states:

> (g) A concise statement of the case setting out the facts material to consideration of the questions presented, and also containing the following:
>
> > (i) If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (*e.g.*, court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari. When the portions of the record relied on under this subparagraph are voluminous, they shall be included in the appendix referred to in subparagraph 1(i).

The petitioner failed to raise any Federal question in the proceedings below and is, therefore, unable to meet the requirements of Rule 14(l)(g)(i). Absent an identification of the stage in the proceedings below when the Federal question sought to be reviewed was raised, the Court should decline to accept the petition.

2. The Writ should be denied because it is substantively devoid of the compelling reasons necessary for this Court to exercise its judicial discretion. Sup. Ct. R. 10 outlines the considerations governing review on certiorari. Rule 10 underscores the compelling reasons which must exist for the Court to grant the writ. The Rule also outlines the character of the reasons the Court considers. These reasons include:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States Court of appeal on the same important matter; has decided an important Federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctions such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) a state court a last resort has decided an important Federal question in away that conflicts with the decision of another state court of last resort of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of Federal law that has not been, but should be, settled by this

> Court, or has decided an important Federal question in a way that conflicts with relevant decisions of this Court.

The Rule also provides that a petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Nowhere in the petition does the Petitioner outline the conflict among the United States courts of appeal which are implicated in this matter. Likewise, the Petitioner does not contend that any important Federal question is involved in his petition. The petition, at best, involves an erroneous factual finding or a misapplication of a properly stated rule of law — precisely the type of petition which this Court appropriately declines to accept.

The review sought herein involves the settlement and dismissal of the Petitioner's medical malpractice action where the Petitioner's counsel announced the settlement in open court and where the Petitioner herein executed a Praecipe stipulating to the dismissal and settlement of his claim. In fact, the Petitioner was present when his counsel announced that a settlement had been reached in the amount of $400,000 and Petitioner voiced no objection to the settlement, nor did he make any statement indicating anything other than acceptance of the resolution. Thereafter, a valid and binding Praecipe of Dismissal and Settlement was executed by all counsel and the Petitioner. The Trial court refused to vacate the praecipe of dismissal. The District of Columbia Court of Appeals affirmed the Trial court's conclusion that a settlement had been reached and agreed to by the Petitioner.

The resolution of this matter by the trial court and the District of Columbia Court of Appeals is in accordance with the long-standing law in the District of Columbia that a release signed by a party may not be avoided on the basis of fraud, misrepresentation or the bad advice of counsel. *Chenault v. W.C. & A.N. Miller Development Company*, 184 A.2d 852 (D.C. Mun. App. 1962). The District of Columbia Courts view a settlement agreement as a contract or executory accord between the parties and "the law favors settlement of controversies and a compromise agreement will be enforced just like any other contract." *Braun v. Hornstein*, 669 A.2d 132, 142 (D.C. App. 1996). Under the law of the District of Columbia settlement agreements such as this one where each party is represented by counsel should be giving great deference. Furthermore, where the parties are represented by counsel and where the Court approves the settlement there can be little room for doubt that appropriate safeguards exist to protect the interests of the parties under our adversarial system. Finally, where a settlement between represented parties is approved by the Court and the document to effect the settlement and dismissal of the claim is signed by the parties the agreement should, and must, be enforced.

At each level of the Petitioner's proceedings in the courts of the District of Columbia, his claims and contentions were evaluated. The trial court patiently entertained the Petitioner's requests to reinstate this case. The District of Columbia Court of Appeals considered the Petitioner's claims, permitted oral argument on appeal and issued a Memorandum Opinion finding that a settlement had in fact been reached which, under the law of the District of Columbia, should be enforced as to the rights and obligations of each party. Under these facts it cannot be said that the District of Columbia lacks judicial procedures to monitor a private party's voluntary settlement of his civil suit.

CONCLUSION

For the reasons given above, the petition should be denied.

Respectfully submitted,

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